

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1322

Introduced by Assembly Member Evans

February 22, 2005

An act to amend Section 170.1 of the Code of Civil Procedure, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

AB 1322, as amended, Evans. Judges: disqualification.

Existing law sets forth the grounds for disqualification of a judge, including, but not limited to, the judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last 2 years has participated in, discussions regarding prospective employment or service *and either the arrangement is, or the discussion was, with a party to the proceeding, or the matter before the judge includes issues relating to the enforcement of an agreement to submit a dispute to alternative dispute resolution or the appointment or use of a dispute resolution neutral.*

This bill would modify those grounds for disqualification to ~~require more than casual discussions regarding prospective employment~~ *apply when (1) the arrangement is, or the discussion was, with a party to the proceeding, (2) the matter before the judge includes issues relating to the enforcement of an agreement to submit a dispute to an alternative dispute resolution process, or (3) the judge will select or use a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the judge, and among those available for selection is an individual or entity with whom the judge has the arrangement or with whom the judge is discussing or has*

discussed the employment or service. The bill would define “participating in discussions” for purposes of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 170.1 of the Code of Civil Procedure is
2 amended to read:
3 170.1. (a) A judge shall be disqualified if any one or more of
4 the following is true:
5 (1) (A) The judge has personal knowledge of disputed
6 evidentiary facts concerning the proceeding.
7 (B) A judge shall be deemed to have personal knowledge
8 within the meaning of this paragraph if the judge, or the spouse
9 of the judge, or a person within the third degree of relationship to
10 either of them, or the spouse of such a person is to the judge’s
11 knowledge likely to be a material witness in the proceeding.
12 (2) (A) The judge served as a lawyer in the proceeding, or in
13 any other proceeding involving the same issues he or she served
14 as a lawyer for any party in the present proceeding or gave
15 advice to any party in the present proceeding upon any matter
16 involved in the action or proceeding.
17 (B) A judge shall be deemed to have served as a lawyer in the
18 proceeding if within the past two years:
19 (i) A party to the proceeding or an officer, director, or trustee
20 of a party was a client of the judge when the judge was in the
21 private practice of law or a client of a lawyer with whom the
22 judge was associated in the private practice of law.
23 (ii) A lawyer in the proceeding was associated in the private
24 practice of law with the judge.
25 (C) A judge who served as a lawyer for or officer of a public
26 agency that is a party to the proceeding shall be deemed to have
27 served as a lawyer in the proceeding if he or she personally
28 advised or in any way represented the public agency concerning
29 the factual or legal issues in the proceeding.
30 (3) (A) The judge has a financial interest in the subject matter
31 in a proceeding or in a party to the proceeding.
32 (B) A judge shall be deemed to have a financial interest within
33 the meaning of this paragraph if:

1 (i) A spouse or minor child living in the household has a
2 financial interest.

3 (ii) The judge or the spouse of the judge is a fiduciary who has
4 a financial interest.

5 (C) A judge has a duty to make reasonable efforts to inform
6 himself or herself about his or her personal and fiduciary
7 interests and those of his or her spouse and the personal financial
8 interests of children living in the household.

9 (4) The judge, or the spouse of the judge, or a person within
10 the third degree of relationship to either of them, or the spouse of
11 such a person is a party to the proceeding or an officer, director,
12 or trustee of a party.

13 (5) A lawyer or a spouse of a lawyer in the proceeding is the
14 spouse, former spouse, child, sibling, or parent of the judge or the
15 judge's spouse or if such a person is associated in the private
16 practice of law with a lawyer in the proceeding.

17 (6) (A) For any reason:

18 (i) The judge believes his or her recusal would further the
19 interests of justice.

20 (ii) The judge believes there is a substantial doubt as to his or
21 her capacity to be impartial.

22 (iii) A person aware of the facts might reasonably entertain a
23 doubt that the judge would be able to be impartial.

24 (B) Bias or prejudice toward a lawyer in the proceeding may
25 be grounds for disqualification.

26 (7) By reason of permanent or temporary physical impairment,
27 the judge is unable to properly perceive the evidence or is unable
28 to properly conduct the proceeding.

29 (8) (A) The judge has a current arrangement concerning
30 prospective employment or other compensated service as a
31 dispute resolution neutral or is participating in, or, within the last
32 two years has participated in, ~~more than casual~~ discussions
33 regarding the prospective employment or service, and ~~either any~~
34 of the following applies:

35 (i) The arrangement is, or the discussion was, with a party to
36 the proceeding.

37 (ii) The matter before the judge includes issues relating to the
38 enforcement of an agreement to submit a dispute to *an* alternative
39 dispute resolution ~~or the appointment or use of a dispute~~
40 ~~resolution neutral.~~

1 ~~(B) For purposes of this paragraph, “party” process.~~

2 (iii) *The judge will select or use a dispute resolution neutral or*
3 *entity to conduct an alternative dispute resolution process in the*
4 *matter before the judge, and among those available for selection*
5 *is an individual or entity with whom the judge has the*
6 *arrangement or with whom the judge is discussing or has*
7 *discussed the employment or service.*

8 (B) *For the purposes of this paragraph, all of the following*
9 *apply:*

10 (i) *“Participating in discussions” means that the judge*
11 *actively participated in making inquiries regarding the terms or*
12 *conditions of possible employment or service as an alternative*
13 *dispute resolution neutral. If a judge’s response to a question*
14 *about or offer of prospective employment or other compensated*
15 *service as a dispute resolution neutral is limited to declining the*
16 *offer or declining to discuss such employment or service, that*
17 *response does not constitute participating in discussions.*

18 (ii) *“Party” includes the parent, subsidiary, or other legal*
19 *affiliate of any entity that is a party and is involved in the*
20 *transaction, contract, or facts that gave rise to the issues subject*
21 *to the proceeding.*

22 ~~(C) For purposes of this paragraph, “dispute~~

23 (iii) *“Dispute resolution neutral” means an arbitrator,*
24 *mediator, temporary judge appointed under Section 21 of Article*
25 *VI of the California Constitution, referee appointed under*
26 *Section 638 or 639, special master, neutral evaluator, settlement*
27 *officer, or settlement facilitator.*

28 (b) *A judge before whom a proceeding was tried or heard shall*
29 *be disqualified from participating in any appellate review of that*
30 *proceeding.*

31 (c) *At the request of a party or on its own motion an appellate*
32 *court shall consider whether in the interests of justice it should*
33 *direct that further proceedings be heard before a trial judge other*
34 *than the judge whose judgment or order was reviewed by the*
35 *appellate court.*